UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 15, 2021

Mr. Gary J. Anthone, M.D., Chief Medical Officer
Director, Division of Public Health
301 Centennial Mall South
P.O. Box 95026
Lincoln, NE 68509-5026

Dear Dr. Anthone:

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) in the review of Agreement State and NRC radiation control programs. Enclosed for your review is the draft IMPEP report, which documents the results of the Nebraska Agreement State Program review on February 1-5, 2021. This review was conducted remotely due to travel restrictions associated with the COVID-19 Public Health Emergency. However, since Nebraska was conducting onsite inspections, the in-person inspector accompaniments were conducted between January 26-27, 2021. The team's preliminary findings were discussed with you and your staff on the last day of the review. The team's proposed recommendations are that the Nebraska Agreement State Program be found adequate to protect public health and safety and compatible with the NRC's program.

The NRC conducts periodic reviews of radiation control programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and that Agreement State programs are compatible with the NRC's program. The IMPEP process uses a team comprised of Agreement State and NRC staff to perform the reviews. All reviews use common criteria in the assessment and place primary emphasis on performance. The final determination of adequacy and compatibility of each program, based on the team's report, is made by the Chair of the Management Review Board (MRB) after receiving input from the MRB members. The MRB is composed of NRC senior managers and an Agreement State program manager.

In accordance with the procedures for implementation of IMPEP, we are providing you with a copy of the draft report for your review and comment prior to submitting the report to the MRB. Comments are requested within 4 weeks from your receipt of this letter. This schedule will permit the issuance of the final report in a timely manner.

The team will review the response, make any necessary changes to the report, and issue it to the MRB as a proposed final report. The MRB meeting is scheduled to be conducted remotely on May 6, 2021, at 1:00 PM ET via Microsoft Teams. The NRC will provide you with Microsoft Teams connection information prior to the meeting.

If you have any questions regarding the enclosed report, please contact me at Brian.Anderson@nrc.gov or Dr. Lizette Roldan-Otero at Lizette.Roldan@nrc.gov.

Thank you for your cooperation.

Sincerely,

Signed by Anderson, Brian
on 03/15/21

Brian C. Anderson, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety and Safeguards

Enclosure:
2021 Draft IMPEP Report

cc:
Becky Wisell, Interim Deputy Director
Office of Radiological Health
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SUBJECT: LETTER TO G. ANTHONE RE: NEBRASKA FY2021 DRAFT IMPEP REPORT DATE MARCH 15, 2021

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF THE NEBRASKA AGREEMENT STATE PROGRAM

February 1 - 5, 2021

DRAFT REPORT

Enclosure

EXECUTIVE SUMMARY

The results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the Nebraska Agreement State Program (Nebraska) are discussed in this report. The review was conducted from February 1-5, 2021, by a team assembled from the U.S. Nuclear Regulatory Commission (NRC) and the State of Oklahoma. This review was conducted remotely due to travel restrictions associated with the COVID-19 Public Health Emergency. An in-person inspector accompaniment was conducted between January 26-27, 2021.

The team found Nebraska's performance to be satisfactory for all indicators reviewed. These indicators are: Technical Staffing and Training; Status of Materials Inspection Program; Technical Quality of Inspections; Technical Quality of Licensing Actions; Technical Quality of Incident and Allegation Activities; Legislation, Regulations, and Other Program Elements.

The team found that the Legislation, Regulations, and Other Program Elements performance indicator improved from "satisfactory but needs improvement" during the 2016 review, to satisfactory during this review. The team's finding is based on the progress made by Nebraska in the adoption of all regulation packages due during the review period, including five regulation packages that were overdue in the 2016 IMPEP review.

The team did not make any recommendations on the indicators reviewed, and there were no recommendations to be closed out from the previous IMPEP review.

Accordingly, the team recommends that Nebraska be found adequate to protect public health and safety and compatible with the NRC's program. The team recommends that the next IMPEP review take place in approximately 4 years with a periodic meeting in approximately 2 years.

1.0 INTRODUCTION

The Nebraska Agreement State Program (Nebraska) review was conducted remotely from February 1-5, 2021, by a team assembled from the U.S. Nuclear Regulatory Commission (NRC) and the State of Oklahoma. Team members are identified in Appendix A. This review was conducted remotely due to travel restrictions imposed by the COVID-19 Public Health Emergency (PHE). An inspector accompaniment was conducted in person prior to the review. The review was conducted in accordance with the "Agreement State Program Policy Statement," published in the *Federal Register* on October 18, 2017 (82 FR 48535), and NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated July 24, 2019. Preliminary results of the review, which covered the period of January 16, 2016 to February 5, 2021, were discussed with Nebraska managers on the last day of the review.

In preparation for the review, the team sent Nebraska a questionnaire addressing the common performance indicators and applicable non-common performance indicator. A copy of Nebraska's questionnaire response is available in the NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number ML21022A018.

Nebraska is administered by the Radiological Health Program (the Program) which is located within the Division of Public Health (the Division). The Division is part of the Department of Health and Human Services (the Department). The Program Director reports to the Administrator of the Environmental Health Unit which is part of the Division. Organization charts for Nebraska are available in ADAMS (Accession Number ML21022A024).

At the time of the review, Nebraska regulated 130 specific licenses authorizing possession and use of radioactive materials. The review focused on the radiation control program as it is carried out under Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of Nebraska.

The team evaluated the information gathered against the established criteria for each common and the applicable non-common performance indicator and made a preliminary assessment of Nebraska's performance.

2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The previous IMPEP review concluded on January 15, 2016. The final report is available in ADAMS (Accession Number ML16105A230). The results of the review are as follows:

Technical Staffing and Training: Satisfactory
Recommendation: None

Status of Materials Inspection Program: Satisfactory
Recommendation: None

Technical Quality of Inspections: Satisfactory
Recommendation: None

Technical Quality of Licensing Actions: Satisfactory
Recommendation: None

Technical Quality of Incident and Allegation Activities: Satisfactory

Recommendation: None

Legislation, Regulations, and Other Program Elements: Satisfactory, But Needs Improvement
Recommendation: None

Overall finding: Adequate to protect public health and safety and compatible with the NRC's program.

3.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC and Agreement State radiation control programs. These indicators are: (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities.

3.1 Technical Staffing and Training

The ability to conduct effective licensing and inspection programs is largely dependent on having a sufficient number of experienced, knowledgeable, well-trained technical personnel. Under certain conditions, staff turnover could have an adverse effect on the implementation of these programs and could affect public health and safety.

Apparent trends in staffing must be assessed. Review of staffing also requires consideration and evaluation of the levels of training and qualification. The evaluation standard measures the overall quality of training available to, and taken by, materials program personnel.

a. Scope

The team used the guidance in State Agreements procedure SA-103, “Reviewing the Common Performance Indicator: Technical Staffing and Training,” and evaluated Nebraska’s performance with respect to the following performance indicator objectives:

- A well-conceived and balanced staffing strategy has been implemented throughout the review period.
- Any vacancies, especially senior-level positions, are filled in a timely manner.
- There is a balance in staffing of the licensing and inspection programs.
- Management is committed to training and staff qualification.
- Agreement State training and qualification program is equivalent to NRC Inspection Manual Chapter (IMC) 1248, “Formal Qualifications Program for Federal and State Material and Environmental Management Programs.”
- Qualification criteria for new technical staff are established and are followed, or qualification criteria will be established if new staff members are hired.
- Individuals performing materials licensing and inspection activities are adequately qualified and trained to perform their duties.
- License reviewers and inspectors are trained and qualified in a reasonable period of time.

b. Discussion

The Program is comprised of six staff members (one director, three health physicists, and two administrative staff) which equals 5.8 full-time equivalent (FTE) for the radiation control program when fully staffed. The 5.8 FTE is comprised of 3.85 technical FTE and 1.95 administrative FTE. At the time of the review, there was one vacancy for the Program Director position, which had been vacant for 2 months. While the Program works to fill the vacant position, the Interim Deputy Director for the Health Licensure & Environmental Health is overseeing the Program.

During the review period, three staff members left the Program and two staff members were hired. One position was filled prior to the staff's departure and the second position was vacant for 2 months and 23 days.

The Program has a training and qualification program compatible with the NRC's IMC 1248. The Program's qualification process uses a combination of on-the-job training and NRC sponsored courses. The team noted that qualified staff received the 24-hour refresher training as detailed in the NRC IMC 1248.

Temporary Instruction (TI) 003, "Evaluating the Impacts of the COVID-19 Public Health Emergency as part of the Integrated Materials Performance Evaluation Program," states, in part, that license reviewers and inspectors may take longer to become qualified due to the inability to travel to attend training classes needed to complete qualification and inspections being delayed due to social distancing or other factors related to the COVID-19 PHE, provided the Program continued to maintain health, safety, and security. The team noted that although the COVID-19 PHE has reduced the number of in-person training opportunities, the Program's staff continues to enroll in NRC virtual classes, when available. The Program has also taken advantage of NRC on-line training classes, which the Organization of Agreement States worked with NRC to provide.

c. Evaluation

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.1.a. Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that Nebraska's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.2 Status of Materials Inspection Program

Periodic inspections of licensed operations are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety and security practices. The frequency of inspections is specified in IMC 2800, "Materials Inspection Program," and is dependent on the amount and type of radioactive material, the type of operation licensed, and the results of previous inspections. There must be a capability for maintaining and retrieving statistical data on the status of the inspection program.

a. Scope

The team used the guidance in State Agreements procedure SA-101, "Reviewing the Common Performance Indicator: Status of the Materials Inspection Program," and evaluated Nebraska's performance with respect to the following performance indicator objectives:

- Initial inspections and inspections of Priority 1, 2, and 3 licensees are performed at the frequency prescribed in IMC 2800.
- Deviations from inspection schedules are normally coordinated between technical staff and management.
- There is a plan to perform any overdue inspections and reschedule any missed or deferred inspections, or a basis has been established for not performing any overdue inspections or rescheduling any missed or deferred inspections.
- Candidate licensees working under reciprocity are inspected in accordance with the criteria prescribed in IMC 2800, and other applicable guidance or compatible Agreement State Procedure.
- Inspection findings are communicated to licensees in a timely manner (30 calendar days, or 45 days for a team inspection), as specified in IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports".

b. Discussion

The Program performed 156 Priority 1, 2, 3, and initial inspections during the review period. All Priority 1, 2, 3 and initial inspections were conducted on time during the review period. The Program's inspection frequencies are the same for similar license types in IMC 2800.

A sampling of 24 inspection reports and a review of the Program's database indicated that none of the inspection findings were communicated to the licensees beyond the Program's goal of 30 days after the inspection exit.

The team reviewed the Program's inspection of candidate licensees working under reciprocity. The Program has revised their reciprocity inspection guidance to align with the latest revision of IMC 2800, in that reciprocity inspections will be performed as time allows using a risk-informed approach. The team determined that the Program inspected at least 20 percent of the candidate licensees working under reciprocity in 4 out of 5 calendar years covered by the review period. The lone exception was calendar year 2020, when, due to the COVID-19 PHE, the Program did not inspect any of the candidate licensees working under reciprocity. The TI-003 states, in part, that inspections of candidate licensees working under reciprocity that differ from the criteria prescribed in IMC 2800, and other applicable guidance or compatible Agreement State Procedures, should be noted in the report but should not be considered by the IMPEP team while establishing the overall indicator rating.

The team noted that, in spite of the COVID-19 PHE, the Program conducted all Priority 1, 2, 3 and initial inspections without any going overdue. This accomplishment is due, in part, to Nebraska's meticulous maintenance of the materials inspection program. The team noted that most of the inspections performed during the review period were performed prior to their due date, instead of within the plus 50-percent scheduling window. This allowed for greater flexibility to plan inspections during the COVID-19 PHE in calendar year 2020.

c. Evaluation

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.2.a. Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that Nebraska's performance with respect to the indicator, Status of Materials Inspection Program, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.3 Technical Quality of Inspections

Inspections, both routine and reactive, provide reasonable assurance that licensee activities are carried out in a safe and secure manner. Accompaniments of inspectors performing inspections, and the critical evaluation of inspection records, are used to assess the technical quality of an inspection program.

a. Scope

The team used the guidance in State Agreements procedure SA-102, "Reviewing the Common Performance Indicator: Technical Quality of Inspections," and evaluated Nebraska's performance with respect to the following performance indicator objectives:

- Inspections of licensed activities focus on health, safety, and security.
- Inspection findings are well-founded and properly documented in reports.
- Management promptly reviews inspection results.
- Procedures are in place and used to help identify root causes and poor licensee performance.
- Inspections address previously identified open items and violations.
- Inspection findings lead to appropriate and prompt regulatory action.
- Supervisors, or senior staff as appropriate, conduct annual accompaniments of each inspector to assess performance and assure consistent application of inspection policies.
- For programs with separate licensing and inspection staffs, procedures are established and followed to provide feedback information to license reviewers.
- Inspection guides are compatible with NRC guidance.
- An adequate supply of calibrated survey instruments is available to support the inspection program.

b. Discussion

The team evaluated 24 inspection reports and associated enforcement documentation. The team reviewed casework for inspections conducted by all three of the Program's inspectors and covered medical, industrial, commercial, academic, research, and service provider licenses. The team interviewed one inspector because the other two inspectors had retired prior to the IMPEP review.

Based on its review of inspection documentation, the team found that inspections were conducted with enough detail and depth to evaluate licensee performance in meeting regulatory requirements and license commitments. Inspection procedures are compatible with NRC guidance. Citations issued to licensees due to violations of Nebraska's radioactive materials regulations, or for failure to perform activities as specified by license conditions, were well supported in the inspection reports. Inspection documentation was complete and, when required, was marked to prevent inadvertent

public disclosure. In all cases, enforcement documentation was complete and indicated that the Program sufficiently evaluates licensee corrective actions.

A team member accompanied one inspector January 26-27, 2021. The in-person inspector accompaniment is identified in Appendix B. No performance issues were noted during the inspector accompaniment. The inspector was well-prepared, thorough, and assessed the impacts of licensed activities on health, safety, and security. The inspector clearly communicated the inspection findings to the licensee at the exit meetings.

Typically, the Program conducts unannounced performance-based inspections. However, due to the impacts of the COVID-19 PHE, the inspectors announced their inspections and were required to contact the licensee to inquire about the health of the licensee's staff prior to the inspection. If the licensee had any employees that displayed symptoms of COVID-19, the inspector postponed the inspection to a later date.

With two exceptions, supervisory accompaniments were performed annually for all qualified inspectors for each year of the review period. In 2016, one qualified inspector was not accompanied. In 2018, a different qualified inspector was not accompanied. Because the supervisor from that time period retired, the team could not ascertain why these accompaniments were not performed.

The team determined that the Program has a sufficient supply of radiation detection equipment to support the inspection program, to include Geiger-Muller detectors, scintillation detectors, ion chambers and micro-R meters. Radiation detection instruments are calibrated every 12 months by either the instrument manufacturer or the neighboring State of Iowa's Radiological Maintenance Shop.

c. Evaluation

The team determined that during the review period Nebraska met the performance indicator objectives listed in Section 3.3.a, except for:

- Supervisors, or senior staff as appropriate, conduct annual accompaniments of each inspector to assess performance and assure consistent application of inspection policies.

Nebraska supervisors did not perform two inspector accompaniments during the review period, one in 2016 and the second in 2018. Since the two inspectors were both senior level staff members with extensive experience, the team determined that the absence of these two inspector accompaniments did not have an adverse impact on the Program. Because the supervisor from that time period was no longer employed by Nebraska, the team could not ascertain why these accompaniments were not performed. In addition, the Program identified that there was no mechanism to track supervisory accompaniments. During the week of the review, the Program created a tracking table to ensure future inspector accompaniments are completed annually for each qualified inspector.

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Inspections, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.4 Technical Quality of Licensing Actions

The quality, thoroughness, and timeliness of licensing actions can have a direct bearing on public health and safety, as well as security. An assessment of licensing procedures, implementation of those procedures, and documentation of communications and associated actions between the Nebraska licensing staff and regulated community is a significant indicator of the overall quality of the licensing program.

a. Scope

The team used the guidance in State Agreements procedure SA-104, "Reviewing the Common Performance Indicator: Technical Quality of Licensing Actions," and evaluated Nebraska's performance with respect to the following performance indicator objectives:

- Licensing action reviews are thorough, complete, consistent, and of acceptable technical quality with health, safety, and security issues properly addressed.
- Essential elements of license applications have been submitted and elements are consistent with current regulatory guidance (e.g., pre-licensing guidance, Title 10 Code of Federal Regulation (CFR) Part 37, financial assurance, etc.)
- License reviewers, if applicable, have the proper signature authority for the cases they review independently.
- License conditions are stated clearly and can be inspected.
- Deficiency letters clearly state regulatory positions and are used at the proper time.
- Reviews of renewal applications demonstrate a thorough analysis of a licensee's inspection and enforcement history.
- Applicable guidance documents are available to reviewers and are followed (e.g., NUREG-1556 series, pre-licensing guidance, regulatory guides, etc.).
- Licensing practices for risk-significant radioactive materials are appropriately implemented including the physical protection of Category 1 and Category 2 quantities of radioactive material (10 CFR Part 37 equivalent).
- Documents containing sensitive security information are properly marked, handled, controlled, and secured.

b. Discussion

During the review period, the Program performed 869 radioactive materials licensing actions. The team evaluated 22 of those licensing actions: 5 new applications, 12 amendments, 2 renewals and 3 license terminations. The team evaluated casework which included the following license types and actions: broad scope, medical diagnostic and therapy, commercial manufacturing and distribution, industrial radiography, academic, nuclear pharmacy, gauges, self-shielded irradiators and financial assurance. The casework sample represented work from four current and former license reviewers.

The team reviewed the Program's license templates, procedures, and the Nebraska Regulatory Guides, which are equivalent to the NRC NUREG-1556 series. The Program's licensing guides provide clear guidance for various licensing action types including new, renewals, terminations, and change of control actions. Licensing actions are reviewed by a secondary reviewer who is qualified to perform that type of review. Timeliness goals are established to ensure responsiveness to licensees or applicants, but also provide licensees or applicants sufficient time to respond to requests for information, particularly when the requests are complex.

The team determined that licensing actions were well documented and properly address health, safety, and security issues. Deficiency letters were clear and used at appropriate times. Reviews of renewals included an analysis of the licensee's inspection and enforcement history.

The team evaluated the implementation of the Pre-Licensing Guidance (PLG) and Risk Significant Radioactive Materials (RSRM) checklists. The Program conducted pre-licensing visits for unknown entities in accordance with the checklist, and properly implemented the PLG. For applications with RSRM, the Program completed the RSRM checklist and performed on-site security reviews, as necessary. In addition, the team determined that documents containing sensitive security information were marked, handled, and secured appropriately.

c. Evaluation

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.4.a. Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.5 Technical Quality of Incident and Allegation Activities

The quality, thoroughness, and timeliness of response to incidents and allegations of safety concerns can have a direct bearing on public health, safety and security. An assessment of incident response and allegation investigation procedures, actual implementation of these procedures, internal and external coordination, timely incident reporting, and investigative and follow-up actions, are a significant indicator of the overall quality of the incident response and allegation programs.

a. Scope

The team used the guidance in State Agreements procedure SA-105, "Reviewing the Common Performance Indicator: Technical Quality of Incident and Allegation Activities," and evaluated Nebraska's performance with respect to the following performance indicator objectives:

- Incident response, and allegation procedures are in place and followed.
- Response actions are appropriate, well-coordinated, and timely.
- On-site responses are performed when incidents have potential health, safety, or security significance.
- Appropriate follow-up actions are taken to ensure prompt compliance by licensees.
- Follow-up inspections are scheduled and completed, as necessary.
- Notifications are made to the NRC Headquarters Operations Center for incidents requiring a 24-hour or immediate notification to the Agreement State or NRC.
- Incidents are reported to the Nuclear Material Events Database (NMED) and closed when all required information has been obtained.
- Allegations are investigated in a prompt, appropriate manner.
- Concerned individuals are notified within 30 days, of investigation conclusions.

- Concerned individuals' identities are protected, as allowed by law.

b. Discussion

During the review period, 33 incidents were reported to the Program. Nineteen of the reported incidents involved lost tritium exit signs. The team evaluated the remaining 14 incidents which included both specifically and generally licensed devices. There were three reports of lost gauges, three reports of lost radioactive material, and eight reports of damaged equipment and equipment failures. The Program dispatched inspectors for onsite follow-up for most of the cases reviewed.

When notified of an incident, management and staff meet to discuss the incident and determine the appropriate level of response, which can range from an immediate response to reviewing the incident during the next routine scheduled inspection. Those determinations are made based on both the circumstances and the health and safety significance of the incident. The team found that Nebraska's evaluation of incident notifications and its response to those incidents was thorough, well balanced, complete, and comprehensive.

The team also evaluated the Program's reporting of events to the NRC's Headquarters Operations Officer (HOO). The team noted that in each case requiring HOO notification, the Program reported the events within the required timeframe. The team also evaluated whether the Program had failed to report any required events to the HOO. The team did not identify any missed reporting requirements.

During the review period, two allegations were referred to the Program, one from the NRC and one from State of Iowa. No allegations were received directly by the Program. The team evaluated the casework for both allegations and found that the Program took prompt and appropriate action in response to the concerns raised. The Program appropriately closed both allegations, notified concerned individuals of the actions taken, and protected allegers' identities in accordance with state law.

c. Evaluation

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.5.a. Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

4.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State programs: (1) Legislation, Regulations, and Other Program Elements; (2) Sealed Source and Device (SS&D) Evaluation Program; (3) Low-Level Radioactive Waste (LLRW) Disposal Program; and (4) Uranium Recovery Program. The NRC retains regulatory authority for the uranium recovery program; therefore, only the first three non-common performance indicators applied to this review.

4.1 Legislation, Regulations, and Other Program Elements

State statutes should authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the State's agreement with the NRC. The statutes must authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of adequate protection of public health, safety, and security. The State must be authorized through its legal authority to license, inspect, and enforce legally binding requirements, such as regulations and licenses. The NRC regulations that should be adopted by an Agreement State for purposes of compatibility or health and safety should be adopted in a time frame so that the effective date of the State requirement is not later than 3 years after the effective date of the NRC's final rule. Other program elements that have been designated as necessary for maintenance of an adequate and compatible program, should be adopted and implemented by an Agreement State within 6 months following NRC designation. A Program Element Table indicating the Compatibility Categories for those program elements other than regulations can be found on the State Communications Portal (SCP) Web site: https://scp.nrc.gov/regtoolbox.html.

a. Scope

The team used the guidance in State Agreements procedure SA-107, "Reviewing the Non-Common Performance Indicator: Legislation, Regulations, and Other Program Elements," and evaluated Nebraska's performance with respect to the following performance indicator objectives. A complete list of regulation amendments can be found on the SCP Web site: https://scp.nrc.gov/regtoolbox.html.

- The Agreement State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of radioactive materials under the Atomic Energy Act, as amended.
- Regulations adopted by the Agreement State for purposes of compatibility or health and safety were adopted no later than 3 years after the effective date of the NRC regulation.
- Other program elements, as defined in SA-200 that have been designated as necessary for maintenance of an adequate and compatible program, have been adopted and implemented within 6 months of NRC designation.
- The State statutes authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the agreement.
- The State is authorized through its legal authority to license, inspect, and enforce legally binding requirements such as regulations and licenses.
- Sunset requirements, if any, do not negatively impact the effectiveness of the State's regulations.

b. Discussion

Nebraska became an Agreement State on October 1, 1966. The Nebraska Agreement State Program's current effective statutory authority is contained in Title 180 of the Nebraska Administrative Code, of the Nebraska Statutes. The Department is designated as the State's radiation control agency. There were three legislative amendments passed during the review period that affected the radiation control program:

- Radiation Control Act (2017)
- Nebraska Emergency Management Act (NEMA) (2017)

- Administrative Procedures Act (2017)

These legislation packages were sent to the NRC for review on February 2, 2021, during the week of the review. Subsequent to the review, the NRC determined that the revisions to the legislations did not affect the radiation control program. In addition to the changes to the legislation, Executive Order 17-04 was issued by the Governor on July 6, 2017, which in part, required all state agencies to immediately suspend all rulemaking and to review all current and pending regulations to determine if they were overly restrictive or were not cost versus benefit effective, and if so, to revise or repeal the regulations. The Executive Order suspending all rulemaking was supposed to be in place until December 31, 2017. On August 31, 2017, the Department requested an exemption to Executive Order 17-04 to allow the Department to adopt pending regulations already in process. That exemption was granted allowing regulations to proceed to the Governor's desk for signature.

Nebraska's administrative rulemaking process takes approximately 17 months from drafting to finalizing a rule. The public, NRC, other agencies, and potentially impacted licensees and registrants are offered an opportunity to comment during the process. Comments are considered and incorporated, as appropriate, before the regulations are finalized and approved by the Department. The team noted that the State's rules and regulations are not subject to "sunset" laws.

During the review period, Nebraska submitted 3 legislation amendments, 7 proposed regulation amendments, 12 final regulation amendments, and 1 legally binding license condition to the NRC for a compatibility review. Of the 12 final regulation amendments submitted, 2 were overdue for State adoption at the time of submission by 39 and 41 days.

During the 2016 IMPEP review, the team determined that five regulations were overdue for adoption. All five of those overdue regulations were adopted during this review period. At the time of the review, no amendments were overdue for adoption. However, the Program needs to resolve a minor correction for one regulation:

- RATS ID 2013-2: Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions Parts 30, 40 and 70 (78 FR 32310).

The Program intends to correct this regulation in the next package submission scheduled in 2021.

c. Evaluation

The team determined that during the review period Nebraska met the performance indicator objectives listed in Section 4.1.a, except for:

- Regulations adopted by the Agreement State for purposes of compatibility or health and safety were adopted no later than 3 years after the effective date of the NRC regulation.

Two regulations were overdue, by 39 and 41 days, for State adoption at the time of submission. This appears to be due, in part, to the Executive Order that was issued by the Governor in 2017. Although the Department received an exemption to the Executive Order in August of 2017, the team noted that no regulations were adopted by the

Department in 2017. However, the overdue regulations, along with three other regulation packages, were adopted in March 2018, after the executive order had expired.

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that Nebraska's performance with respect to the indicator, Legislation, Regulations, and Other Program Elements, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

4.2 SS&D Evaluation Program

Although Nebraska has authority to conduct SS&D evaluations for byproduct, source, and certain special nuclear materials, it did not conduct any SS&D evaluations during the review period. There are currently no SS&D manufacturers in Nebraska. If Nebraska were to receive an application for a SS&D action, it would have to outsource the action. Accordingly, the team did not review this indicator.

4.3 LLRW Disposal Program

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," to allow a State to seek an amendment for the regulation of LLRW as a separate category. Those States with existing Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need for an amendment. Although Nebraska has the authority to regulate a LLRW disposal facility, the NRC has not required States to have a program for licensing a disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, it is expected to put in place a regulatory program that will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in Nebraska. Accordingly, the team did not review this indicator.

5.0 SUMMARY

As noted in Sections 3.0 and 4.0 above, Nebraska's performance was found to be satisfactory for all performance indicators reviewed. The team did not make any recommendations.

Accordingly, the team recommends that Nebraska be found adequate to protect public health and safety**,** and compatible with the NRC's program. Based on the results of the current IMPEP review, the team recommends that the next full IMPEP review take place in approximately 4 years, with a periodic meeting in approximately 2 years.

LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	Inspector Accompaniment

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	**Areas of Responsibility**
Lizette Roldan-Otero, Ph.D., NMSS	Team Leader Technical Staffing and Training Legislation, Regulations, and Other Program Elements Inspector Accompaniment
Randy Erickson, Region IV	Technical Quality of Incident and Allegation Activities
James Thompson, Region IV	Status of Materials Inspection Program Technical Quality of Inspections
Keisha Cornelius, State of Oklahoma	Technical Quality of Licensing Actions

APPENDIX B

INSPECTOR ACCOMPANIMENT

The following inspector accompaniment was performed prior to the IMPEP review:

Accompaniment No.: 1	License No.:02-74-01
License Type: *e.g., Industrial Radiography*	Priority: 1
Inspection Date: 01/26-27/21	Inspector: BH